

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3196 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MANJULABEN MANABHAI PARMAR

Versus

DISTRICT PRIMARY EDUCATION

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Appearance:

MR VH DESAI for Petitioner  
SERVED for Respondent No. 1  
MR KG VAKHARIA for Respondent No. 2  
MR VC DESAI for Respondent No. 5  
Rest served.

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CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 02/09/96

ORAL JUDGEMENT

The petitioner, at the relevant time was serving as Assistant Teacher in the Primary Kanya Shala No.1 at Vadnagar, has challenged the transfer order that may be passed by filing this petition.

Brief facts leading to the present proceedings are as under:-

The petitioner was appointed in the year 1973 as Primary Teacher at Katosan. Thereafter she was transferred after about 2 1/2 years to Vadnagar. As averred by the petitioner she was born and brought up at Vadnagar and she is continuously serving at Vadnagar for about seven years before filing the petition without any complaint. It appears that her husband was serving as Junior Clerk at Danta, District Banaskantha. She applied for a mutual transfer with one Annapurnaben, who was serving at the relevant time at Danta taluka at Banaskantha District, and she wanted to be transferred to Vadnagar. The petitioner made an application with a view to stay with her husband. Petitioner has stated that she has four children, father and mother-in-law and to have a happy married life she had taken the decision to have mutual transfer.

It is averred by the petitioner that, by letter dated 12-9-1984 she intimated her change of mind and dropping the idea of transfer by mutual consent. She has given the reason that, as her in-laws have become old and she has got four children she would not like to have a transfer. It appears that again on 26-11-1984 a letter was written indicating that circumstances have been changed and her husband was also transferred from Banaskantha district and therefore it is not necessary for the petitioner to go to Banaskantha, and therefore the application is required to be cancelled, which was forwarded by her for mutual transfer. It is averred by the petitioner that, on 26-3-1985 she came to know that said Annapurnaben serving at Danta Primary Boys School No.1 is to join at Vadnagar though she was not transferred and/or there was no vacancy. It is averred by her that on account of influence said Annapurnaben managed to get herself transferred to Vadnagar on 27-3-85. Thereafter petitioner made an application withdrawing her consent for mutual transfer by her letter dated 28-3-85. Again by letter dated 29-3-85 an application was forwarded to the same effect. She approached Respondent No.4 the Director of Education, Gandhinagar, who in turn addressed a letter to District Primary Education Officer, Mehsana, stating that the petitioner is not willing to be mutually transferred and therefore she can be continued in her present post. Copy of the said letter is at Annexure-H. It appears that, she again addressed a letter dated 11-4-1985 to cancel the mutual transfer. It appears that respondent no.2

communicated to the petitioner in this regard that she would be heard on 29-4-85 and a decision will be taken. Again on 22-4-85 she indicated that she would like to be at her native place and repeated the reasons, which are as discussed earlier. It is averred that said Annapurnaben with other staff came to Vadnagar in order to bring pressure on respondent no.5, Head Mistress of the school. Different dates are referred in this behalf by the petitioner and as she was apprehending that she would be transferred in view of the influence brought upon the officers of respondent no.1, notice was given to respondents no. 1 to 3 under Bombay Primary Education Act and Gujarat Panchayat Act, requesting them from not transferring the petitioner and also requesting them from not placing Annapurnaben in her place. Thus, it is clear that on an apprehended ground the petition is preferred. Till this date no transfer order is placed on record by the petitioner.

On behalf of the respondents affidavit of one Mr. D.D. Katara, District Primary Education Officer is filed, wherein it is pointed out that the District Primary Education Committee resolved by a resolution dated 18-8-84 accepting the mutual transfer of Annapurnaben and Manjulaben (present petitioner) as requested by them. This decision was communicated to District Primary Education Officer, Mehsana, by letter dated 27-8-84 since the Banaskantha District Primary Education Committee was agreeable for the mutual transfer. The Mehsana District Primary Education Committee on 19th November 1984 accepted the mutual transfer and order in this behalf was passed on August 31, 1984, by posting the petitioner at Navavas, Taluka Danta and giving posting to Annapurnaben at Vadnagar.

The deponent has pointed out that no application like 12th September 1984 is on record and the said application is not genuine. Even application dated 26th November 1984 is also not on the record and the office of the deponent has not received such an application. Petitioner has not forwarded the said applications by registered post or if forwarded the evidence in that behalf is not produced. There is nothing on record to show that the petitioner has handedover copy of the letters personally. No documentary evidence is produced in this behalf after the reply is filed. It is clear from para-4 of the deponent's affidavit that, petitioner never applied withdrawing her request for mutual transfer from Mehsana district either before the resolution dated 18th August 1984 passed by Banaskantha District Primary Education Committee or 19th November 1984 when the

resolution accepting her request was accepted by Mehsana Primary Education Committee. The deponent has also pointed out in the affidavit that, petitioner's husband was serving as Clerk in Banaskantha District Panchayat at Palanpur. The petitioner has conveniently omitted to mention whether he has been transferred or not, and if yes, where. Reading the reply it is very clear that the documents which are produced on record requesting to withdraw the earlier application for transfer which are alleged to have been forwarded before the resolution are not genuine. No affidavit in rejoinder is filed. Even about transfer of her husband, no accurate statement is made. The grounds on which transfer was sought were very much there. Letters are got up as per affidavit in reply. Under the circumstances, in absence of rejoinder the same is to be accepted. In view of such got up letters the petition is required to be rejected.

Petitioner has invited the transfer by mutual transfer application and once having accepted the same by the authorities, no interference is called for, more particularly when the co-applicant is transferred. If subsequently after the resolution passed by Mehsana District Primary Education Committee or Banaskantha District Primary Education Committee, application is forwarded withdrawing her consent would not be a ground to say that the resolution is bad, more particularly when the co-applicant has accepted the transfer and the order is implemented. Under the circumstances the petition is required to be rejected. Rule discharged. Ad-interim relief granted earlier shall stand vacated.

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